

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

FREEDOM COALITION OF DOCTORS FOR
CHOICE,

Plaintiff,

v.

CENTERS FOR DISEASE CONTROL AND
PREVENTION,

Defendant.

Civil Action No. 2:23-cv-9-Z

APPENDIX IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

Table of Appendix

Bates Stamps	Exhibit	Description
App.000001–App.000010	DEX1	Declaration of Roger Andoh

Dated: February 21, 2023

Respectfully submitted,

BRIAN M. BOYNTON

Principal Deputy Assistant Attorney General

MARCIA BERMAN

Assistant Director, Federal Programs Branch

/s/ Jody D. Lowenstein

JODY D. LOWENSTEIN

Mont. Bar No. 55816869

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Counsel for Defendant

DEX1

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
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FREEDOM COALITION OF DOCTORS
FOR CHOICE,

Plaintiff,

V.

CENTERS FOR DISEASE CONTROL
AND PREVENTION,

Defendants.

Civil Action No. 2:23-cv-9

DECLARATION OF ROGER ANDOH

Pursuant to 28 U.S.C. § 1746, I, Roger Andoh, declare the following to be a true and correct statement of facts:

1. I am the Freedom of Information Act (“FOIA”) Officer for the Centers for Disease Control and Prevention (“CDC”) and the Agency for Toxic Substances and Disease Registry (“ATSDR”), both agencies within the U.S. Department of Health and Human Services (“HHS”). I have held this position since June 26, 2016. I make this declaration based upon my personal knowledge and upon information available to me in my official capacity, and if called and sworn as a witness, I could and would testify as set forth herein.

2. As the FOIA Officer, I supervise and direct the day-to-day activities of the CDC/ATSDR FOIA Office (hereinafter referred to as “CDC FOIA Office”). The CDC FOIA Office is the central office responsible for responding to requests for information under the FOIA for records from all operating divisions of the CDC and the ATSDR. FOIA requests are disseminated electronically to areas within the agency that are considered most likely to possess

responsive records. In my position, I determine whether to release or withhold records, or portions of records, in accordance with the FOIA and the HHS implementing regulations. I also coordinate efforts, as necessary, when one or more of the CDC Centers/Institutes/Offices or one of the ATSDR Divisions is involved in responding to a FOIA request.

3. Due to the nature of my official duties, I am familiar with procedures followed by the CDC in responding to the FOIA request of Plaintiff Freedom Coalition of Doctors for Choice.

4. The CDC FOIA Office received a FOIA request from Plaintiff on January 3, 2023, that sought the following categories of agency records: “*All data obtained from v-safe users/registrants from the free text fields within the v-safe program for COVID-19 vaccines and the registrant code associated with each free text field/entry. (Note that all records from pre-populated fields, other than registrant code, can be excluded).*” Appended to the FOIA request was a request for expedited processing under the agency’s regulations.

5. On January 4, 2023, I sent a letter to Christopher Wiest (who submitted the FOIA request on behalf of Plaintiff), acknowledging receipt of Plaintiff’s FOIA request, assigning it request number 23-00462-FOIA, and denying Plaintiff’s request for expedited processing. The document attached as Exhibit A is a true and correct copy of that letter.

6. On January 12, 2023, I sent a letter to Mr. Wiest setting forth the agency’s final determination under 5 U.S.C. § 552(a)(6)(A) regarding Plaintiff’s FOIA request and producing all responsive, non-exempt records. The document attached as Exhibit B is a true and correct copy of that letter.

7. On January 13, 2023, Plaintiff filed an appeal of the CDC’s final determination regarding Plaintiff’s FOIA request to the Deputy Agency Chief FOIA Officer, Office of the

Assistant Secretary for Public Affairs, U.S. Department of Health and Human Services. As of the filing of this declaration, Plaintiff's appeal is still under review.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on this 21st day of February 2023.



Roger Andoh
Freedom of Information Act Officer Centers for
Disease Control and Prevention Agency for Toxic
Substances and Disease Registry
United States Department of Health and
Human Services

Exhibit A



Centers for Disease Control
and Prevention (CDC)
Atlanta GA 30333

January 4, 2023

SENT VIA EMAIL

Christopher Wiest
Attorney at Law, PLLC
25 Town Center Blvd Suite 104
Crestview Hills, Kentucky 41017
Via email: chris@cwiestlaw.com

Dear Mr. Wiest:

The Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) received your Freedom of Information Act (FOIA) request dated January 3, 2023. Your request assigned number is 23-00462-FOIA, and it has been placed in our complex processing queue (copy enclosed).

Extension of Time

In unusual circumstances, an agency can extend the twenty-working-day limit to respond to a FOIA request.

We will require more than thirty working days to respond to your request because:

- ☐ We reasonably expect to receive and review voluminous records in response to your request.
- ☐ We reasonably expect to consult with two or more C/I/O/s, or another HHS operating division or another federal agency about your request.

To process your request promptly, please consider narrowing the scope of your request to limit the number of responsive records. If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact the analyst handling your request Irma S. Diaz at 770-488-6310 or our FOIA Public Liaison, Roger Andoh at 770-488-6277. Additionally, you may contact the Office of Government Services (OGIS) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services; National Archives and Records Administration; 8601 Adelphi Road-OGIS; College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Expedited Processing

You requested that we expedite processing your request. Your request is denied because:

- ☐ You have failed to show that there is an imminent threat to the life or physical safety of an individual.
- ☐ You have not demonstrated that you are a person primarily engaged in disseminating information.

Fees and Fee Waivers

You requested that we waive fees associated with processing your request, your request is denied because it doesn't meet the following criteria:

- ☐ You have failed to demonstrate that you disseminate information to the public.
- ☐ You have failed to provide enough information to warrant a waiver of fees.

Fee Category

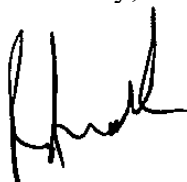
Because you are considered an "Other requester" you are entitled to two hours of free search time, and up to 100 pages of duplication (or the cost equivalent of other media) without charge, and you will not be charged for review time. We may charge for search time beyond the first two hours and for duplication beyond the first 100 pages. (10 cents/page).

Appeal Rights

You have the right to appeal the agency's expedited processing and fee waiver response to your request. You may file your appeal with the Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, U.S. Department of Health and Human Services, via the online portal at <https://requests.publiclink.hhs.gov/App/Index.aspx>. Your appeal must be electronically transmitted by April 5, 2023

You may check on the status of your case on our FOIA webpage <https://foia.cdc.gov/app/Home.aspx> and entering your assigned request number. If you have any questions regarding your request, please contact me at 770-488-6310 or via email at jyo0@cdc.gov.

Sincerely,



Roger Andoh
CDC/ATSDR FOIA Officer
Office of the Chief Operating Officer
Phone: (770) 488-6399
Fax: (404) 235-1852

23-00462-FOIA

Exhibit B



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control
and Prevention (CDC)
Atlanta GA 30333

January 12, 2023

SENT VIA EMAIL

Christopher Wiest
Attorney at Law, PLLC
25 Town Center Blvd. Suite 104
Crestview Hills, Kentucky 41017
Via email: chris@cwiestlaw.com

Dear Mr. Wiest:

This letter is in response to your Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) Freedom of Information Act (FOIA) request of January 3, 2023. Your request assigned number is 23-00462-FOIA, seeking:

“All data obtained from v-safe users/registrants from the free text fields within the v-safe program for COVID-19 vaccines and the registrant code associated with each free text field/entry. (Note that all records from pre-populated fields, other than registrant code, can be excluded). Date range: 10/01/2020-12/31/2022.”

Please click on the following link to download a copy of the public v-safe data released by CDC. The data contains the registrant codes for all participants: <https://data.cdc.gov/Public-Health-Surveillance/v-safe/dqgu-gg5d>

Please be informed that the agency is withholding the v-safe free-text-fields data for the following reasons:

- There are 7.8 million free-text field entries collected in v-safe from registered users that contain personal identifiable information (PII).
- The agency lacks the resources to manually review the data collected from these registrants.

Alternatively, we are providing you with a copy of the “v-safe motivation survey” dataset. This dataset includes survey responses collected from v-safe participants from May 1, 2022, through June 31, 2022. After a careful review, some of the information has been withheld from release pursuant to FOIA Exemption 6.

Please click on the following link or copy into a web browser to download a copy of your records (download access is open for 90 days).

<https://centersfordiseasecontrol.sharefile.com/d-s43a2254979c94ab6b5c52584509a351f>

Appeal Rights

If you are not satisfied with the response to this request, you may administratively appeal to the Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, U.S. Department of Health and Human Services, via the online portal at <https://requests.publiclink.hhs.gov/App/Index.aspx>. Your appeal must be electronically transmitted by April 13, 2023.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Andoh', with a stylized, cursive script.

Roger Andoh
CDC/ATSDR FOIA Officer
Office of the Chief Operating Officer
Phone: (770) 488-6399
Fax: (404) 235-1852

#23-00462-FOIA